BOARD OF INQUIRY (*Human Rights Code*)

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaint by Anne Reed dated June 12, 1989, alleging discrimination in employment and accommodation on the basis of basis of sex, sexual solicitation and reprisal.

B E T W E E N :

Anne Reed

Complainant

- and -

Cattolica Investments Ltd.

Respondent

- and -

Salvatore Ragusa

Respondent

DECISION

Adjudicator : Gerry McNeilly

Date : March 26, 1996

Board File No: 93-0064

Decision No : 96-007

Board of Inquiry (*Human Rights Code*)
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APPEARANCES

Ontario Human Rights Commission	)	William Holder Student-at-law
Anne Reed	)	Mitizi D'Souza Agent
Cattolica Investments Ltd. Salvatore Ragusa	)	Elliot Starer Counsel

DECISION

This hearing involves the complaint of Anne Reed, dated 12th June, 1989, alleging discrimination with respect to:

i. occupancy of accommodation because of sex;
ii. employment because of sex;
iii. harassment in accommodation because of sex;
iv. harassment in the workplace because of sex;
v. sexual solicitation by a person in a position to grant or deny a benefit, and;
vi. reprisal for the rejection of a sexual solicitation by a person in a position to grant or deny a benefit.

contrary to sub-sections 2(1), 5(1) , 7(1), 7(2), 7(3)(a), 7(3)(b) and 9 of the *Human Rights Code*, R.S.O. 1990, c.H. 19, as amended.

The Respondents are Salvatore Ragusa and York Mini Storage.

Commission Counsel raised a number of preliminary issues. He asked to amend the complaint to show the proper name of the Respondent Corporation as CATTOLICA INVESTMENTS LTD. There being no objection by Counsel for the Respondent, the complaint was amended to show the Corporate Respondent to be CATTOLICA INVESTMENTS LTD.

In this matter, the Board is being asked to find that the Respondent Mr. Ragusa violated the *Code* protected rights of the Complainant Ms. Reed. The Complainant is also asking that the Board find the Corporate Respondent, Cattolica Investments Ltd., liable for the actions of Mr. Ragusa, the Personal Respondent, who allegedly violated the *Code* and the rights of the Complainant. Additionally, the Complainant has asked the Board to decide on the novel issue of sexual harassment in accommodation. Novel, because this issue has not come before a Board for adjudication.

ISSUE

The issue before me is clear. Did the Respondent violate the *Code* and the rights of the Complainant? If yes, what remedy is available to the Complainant?

THE EVIDENCE OF THE COMPLAINANT AND THE COMMISSION

The Complainant was represented by an agent Mitizi D'Souza of The Centre for Equality Rights in Accommodation (CERA). The evidence below was largely elicited by the agent for the Commission, Mr. Holden.

The Complainant Anne Beatrice Marie Reed and her husband decided to move to Toronto in February 1989 to seek employment. Mr. Reed was successful in obtaining employment on February 1989. Because of the location of his office, they started to look for an apartment nearby that would reduce his travel time and expenses. The Reeds responded to an ad for the rental of an apartment at 91 Maplecrete Road and Mr. Lincoln Allen showed them the apartment and gave them a tour of the premises. The premises or building was a mini storage building and warehouse with two apartments above the warehouse.

Ms. Reed testified that Mr. Allen advised them that the rent was $675.00 monthly and that pets were acceptable. She stated that there were two apartments, a four (4) bedroom and a two (2) bedroom and one room occupied by a man. They were interested in the two bedroom, because it was within their budget and because the area was quiet. She further stated that she filled out an application form which her husband signed on February 8, 1989, to rent the two bedroom apartment from March 1, 1989.

On February 10, 1989, her husband attended at 91 Maplecrete Road and gave the first and last month's cheques. Ms. Reed stated that they then moved into 91 Maplecrete on February 24, 1989 four days early, before the end of the month. As their apartment would not be available until March 1, 1989, they were told by Mr. Allen that they could temporarily move into the four bedroom and pay $80.00 to cover the four days for occupancy rent. On March 2, 1989, they moved into the two bedroom apartment they had rented. That there was no fridge so they took the fridge from the vacant four bedroom apartment, with the permission of Mr. Allen.

The Complainant also testified that when they were moving into the four bedroom apartment, the Respondent asked her if she wanted to work for him in his office. She said that she declined as she was hoping to get a job she had applied for at Sears. When that job fell through and the Respondent in early March 1989 again ask her to work for him, she went down to the office and filled out an application on March 2, 1989.

She testified that she commenced employment with the Respondent on March 13, 1989. Her starting salary was $225.00 per week, but the Respondent increased her salary rate to $250.00 per week, after the first day of work because he said, he was pleased with her work and that she did a great job. She stated that she worked for the Respondent for a total of two weeks.

She described the Respondent's business as a "U-Lock-It Storage" business; that people rented storage space and that there was also a truck rental business with Ryder Truck Rental Company; plus, the odd moving job. Her duties included answering the telephone, bill collecting, setting up rental for storage and truck rental. The whole office area was small and that she worked in the outer office area, the Respondent worked in a private corner office, which she was not allowed to go into. She stated that the Respondent could enter his inner office from outside but she could not. She also stated that she did not work in the warehouse area.

On the second day of her employment, she stated that the Respondent asked her into his office. She believed it was to see her driver's licence. Instead, she testified, he told her he was recently divorced and ask her if she knew how he could meet women. After they had a short conversation, he grabbed her and attempted to hug and kiss her. She stated she pushed him away and told him to stop and that she was married. She stated that she told her husband of the incident the next day. This was, according to her testimony, the first incident of sexual harassment.

The second incident occurred at the end of the day on March 21, 1989, when she was collecting files and was leaning over her desk. She testified that the Respondent came up behind her and started rubbing his genitals against her. She said she freaked out, pushed him away and ran home, which was upstairs, to the apartment and barricaded herself inside. She said she was afraid for herself in the apartment because he was her landlord, had keys to the apartment and could continue to pursue her knowing that her husband was not at home. She stated that she was a basket case and felt she could be under attack from him at any time.

She did not return to work. On March 22, 1989 she prepared and sent a note to the Respondent stating her hours of work, (copy of note marked as Exhibit 10) which showed that the Respondent owed her $399.82 less a pay advance of $160.00, leaving a balance of $239.82 owing. But to her surprise, she received a cheque dated March 23, 1989 for $20.00 as her final pay, (copy of cheque marked Exhibit 11), which showed deductions made by the Respondent.

On March 22, 1989, she received a telephone call from the Respondent, inquiring why she was not at work. She stated that she did not feel safe in the apartment and as a result, she accompanied her husband to his work and slept in the car.

She stated that she called her mother, with whom she is close, and told her of the attack by the Respondent. She then went to her mother's and sister's in Kitchener and spent a week with them, to get some support and to stay away from the apartment, given her fear. After a week, she felt she had to return home to be with her husband and to seek employment. To this end she applied for work at Canadian Tire and Hertz Rental. Hertz Rental called first and offered her a job which she accepted.

She testified that the Respondent over the next few days repeatedly came to the apartment door yelling obscenities at her through the door and telling her to leave and get off his property. This he would do when her husband was not home. The Complainant stated that he called her a "fucking bitch, tramp, slut" which all made her feel about one inch tall; that he also said that he wanted me out, that he could do whatever he wanted as he owned the building; that he would bang on the apartment door and rattle the door, this scared her and that to protect herself she would place furniture against the door and hide in the bedroom. At the same time, she testified, that the Respondent would send numerous notes to her in writing, stating that she and her husband would be thrown out of the apartment and that he was raising the rent.

By way of a note (Exhibit 13), the Respondent claimed that the Complainant and her husband had fraudulently taken the fridge from the four bedroom apartment and that they had not been performing caretaker duties, which they had agreed to do. The Complainant testified that neither she nor her husband ever agreed to perform caretaker duties.

Further, she stated that all the problems with the Respondent commenced after the second sexual harassment incident when she quit the job; that contrary to the Respondent's allegations, they never entered into any agreement to rent the apartment for $780.00 per month; and that the increase requested by the Respondent came only after she rejected his sexual advances.

To put it simply, the Complainant testified that after March 21, 1989 their lives became hell. The Respondent continuously harassed her and her husband, tried to get them to pay additional rent and to move out. The Respondent eventually brought an application under the *Landlord and Tenant Act* and was successful in having the Complainant and her husband evicted by the end of July 1989. But prior to the eviction, there was an altercation between the Respondent and her husband, which necessitated the police being called and her husband having to attend the hospital because he was scratched and bruised.

Ms. Reed further testified that after the eviction, they moved to an apartment in Mississauga and that the experience encountered with the Respondent left her fearful of others and that she did not trust anyone. For example, she would not get on an elevator alone with any man. She further testified that

the whole matter financially ruined them and that for a long time she could not touch her husband or be close to him. She also stated that the sexual harassment left her scarred, she felt violated, not safe and hurt and that she felt like a prisoner in her own home.

In her cross-examination, she testified that domestic violence never occurred between her and her husband. She also stated that they never entered into any agreement to pay to the Respondent ($50.00) fifty dollars per day for the five (5) days they occupied the four bedroom apartment but that the agreement was for them to pay a total of ($80.00) eighty dollars only. She also testified that the Respondent had shown them a standard lease but that her husband did not have time to read it because he had to go to work, and asked to look at it the next day. But they never saw the lease again.

Further, the Complainant testified that sometime during these ongoing incidents with the Respondent, she contacted the police and spoke to a female police officer to obtain information and that she did not obtain any counselling or other professional assistance. She stated that she did not file a criminal complaint nor considered any other action. She also stated that she contacted The Centre for Equality Rights in Accommodation (CERA) prior to contacting the Human Rights Commission. The Human Rights complaint was filed after she received the notice of eviction.

In response to questions put by the Respondent's counsel, the Complainant stated that even though she was afraid of the Respondent, they stayed at the apartment because it was the ideal place, cats were accepted, it was close to her husband's work and it was affordable. She also stated they were having financial troubles given her being unemployed and that it was some 3½ weeks before she obtained her employment with Hertz at the hourly rate of $6.50.

In response to questions about agreeing to do caretaking duties, the Complainant stated there was never any mention of this and that this issue only came up after the second incident. During the two and a half weeks she worked for him, he never brought the issue of the lease nor mentioned the issue of caretaking. She also testified that her husband had agreed to assist the Respondent with a moving job but never to do continuous caretaking work.

The next witness called by the Commission and cross-examined by Respondent Counsel was Ms. Colette Marie Kelly, the Complainant's mother. Her evidence both in-chief and in cross-examination corroborated the complainant's evidence. Her evidence indicated that she had a very close relationship with the Complainant. As a result of the sexual harassment, the Complainant called her in Kitchener in a very upset and frightened state telling her what occurred and subsequently went to

Kitchener to spend a week with her. She said she had never seen her daughter in such a frightened and angry state.

Mr. Reed's evidence for the most part was quite similar to that of the Complainant in regards to certain events. He corroborated her evidence of her telling him about the sexual advances made to her by the Respondent. His evidence also corroborated that of the Complainant regarding her fear and behaviour after the sexual harassment incidents. Mr. Reed's cross-examination adduced no different evidence, nor did it in anyway contradict previous evidence given or the chronology of the circumstances surrounding this matter. What it did show was the persistence of the Respondent to evict the Reeds from their apartment and the difficulties encountered by the Reeds during this period.

Mr. Michael Harris, the Human Rights Officer who investigated this matter, gave evidence regarding his contacts with the Respondent Ragusa during the course of his investigation of the complaint.

This concluded the case of the Commission.

THE RESPONDENT'S CASE

Mr. Lincoln Allen's evidence indicated that he was employed by the Respondent for some three and a half years prior to the dates involved in this matter, as the manager of operations and oversaw customer services, office services and banking. He testified that his role regarding the apartments at 91 Maplecrete Road, was to take the rental applications, collect rent and show the apartments to interested parties. He stated that he first saw the Reeds on February 8, 1989 and had them complete a preliminary type of application (a pre-application), which he would then pass on to the Respondent. Later on there would be a formal lease to be signed. He stated that he showed Mr. Reed a copy of the actual formal lease, and Mr. Reed said he did not want to sign it without the consent of his wife and his lawyer reviewing it. On February 10, 1989 both Mr. and Ms. Reed attended again at 91 Maplecrete Road. At this attendance, further discussions took place and Mr. Allen was given a cheque for $1,300.00 for first and last months' rent. Mr. Allen testified that he deposited this cheque in the bank without further checking with the Respondent.

It was expected that the Reeds would move in on March 1, 1989. A truck was rented by them for the move and they had requested some storage space for boxes. Because the Reeds in fact, moved in before March 1, 1989, arrangements were made for them to stay in the four (4) bedroom apartment at a cost for its use for the few days. Mr. Allen testified he recalls some discussion about this sum being $250.00 per week. Produced as Exhibit 18, is a document prepared by the Respondent Ragusa, which quotes the use of the four (4) bedroom is at $50.00 (fifty) per day and $700.00 per month for

the two (2) bedroom. This document is signed by Mr. Reed and Mr. Allen testifies that he was present at the time.

Further, Mr. Allen testified that from his recollections, he recalled some discussion between the Respondent and Mr. Reed about him having to do some work to offset any possible reduction in the rent. Work such as caretaking and watchman. Mr. Allen did not know about the circumstances of the hiring of Ms. Reed, but he recalled her working at the Respondent's business in early March 1989, just before he took a leave for personal reasons. He testified that he returned to work the week of March 14, 1989. Upon his return he testified that Ms. Reed was not working for the Respondent.

In relation to the complaints of Ms. Reed, Mr. Allen states that he only heard about them from the Respondent but he cannot remember the date, which to his recollection was not long after she left the job. He stated that Ms. Reed never made any complaints to him regarding the actions of the Respondent.

In his cross-examination, Mr. Allen had different recollections about events surrounding this matter. Specifically, he stated that Mr. Reed did not complete all parts of Exhibit 7, the pre-application; that Mr. Reed was the only one who came into the office; and, that he was not sure if someone waited in the car. Also, he indicated that normally there is a formal lease drawn up but was not positive if Exhibit 33 was the usual formal lease used. To be fair to Mr. Allen, he stated that it had been such a long time since this matter started, some 6 years ago, that he did not take notes or write anything down, that it was quite possible that he forgot events or was mixing up dates. In responding to his possibly mixing up dates, he said one has to "give a little, take a little" and that he could be wrong about dates and events. The evidence of Mr. Allen was both unclear and confusing. His recollection about events was not clear nor was it convincing. While this Board accepts that Mr. Allen came as a witness to give his best evidence, his evidence cannot be accepted given its imprecision and inconsistencies. His evidence was not helpful to the Board.

Mr. Ragusa, the Personal Respondent gave his evidence in chief; he became involved in the warehouse business in 1980 and added a second floor to the building, to add a residential part to the 91 Maplecrete Road property and turned it into a mini storage business. He called the business CATTOLICA INVESTMENTS LTD. and became its president in 1989. He stated that in renting the apartments he always looked for someone who would keep an eye on the business, to have someone on site to be like a watchman.

In 1989, the storage business went under the name York Mini Storage. The business hours were usually 8:30 a.m to 5:30 p.m. Only one employee was required and that Mr. Allen was employed as

the staff during 1989. He stated that Mr. Allen was responsible for dealing with prospective tenants. He would receive the application and pass it on the Respondent for approval.

In this particular matter, his evidence is that Mr. Allen received the application from the Reeds and discussed it with him. He stated that the issue of Mr. Reed not signing the lease around February 23, 1989 created a harsh exchange of words between him and Mr. Reed. The Reeds were staying in the four (4) bedroom apartment at this time and were to leave the door unlocked, to allow the apartment to be showed. This proved to be problematic as the Reeds would not allow entry into the four (4) bedroom apartment.

Mr. Ragusa further testified that around February 23, 1989, he presented the lease to the Reeds for signing but Mr. Reed refused to sign it. This matter ended in a pushing incident between Mr. Reed and Mr. Ragusa.

On March 1, 1989, Mr. Ragusa testified that he signed a notice and put it on the Reeds' apartment door, advising them to move out given the problems already being encountered. He stated that after he gave the notice on March 1, Ms. Reed attended his office on March 2, 1989, he thought to discuss the notice but instead she wanted to make an application for a job. Later that day after she completed the job application, he interviewed her. He said that during the interview he wanted to say no to her in a nice way given the problems already being encountered with the apartment rental, but did not do so.

Mr. Ragusa then stated that Ms. Reed told him about her past jobs, about her stint in the army and about her conduct during that time, including putting insulation in her shoes to appear taller and hosting 26 men in her room to have a good time. He said he advised her that there was no job available but if one became available he would let her know. He indicated that she would call him on a regular basis to find out about the job. When Mr. Allen had to leave with little notice, he hired her because he felt she would see if he had hired someone else. He was careful with her because she told him she knew how to complain.

On or about March 12, 1989, he said he offered her work for one to two days per week. She started work March 13 and worked and was paid for the full week of March 13 - 17. In his evidence, he stated that on her first day at work, she came in at about 10 minutes to 12 (noon) and not at 8:30 a.m as required. When he confronted her about her lateness, he said she told him she was beaten up last night by her husband. He stated that she also discussed with him intimate details of her sex life with her husband and that she discussed his sex life with him and told him that she could help him enjoy life.

On the second day, he indicated, that she reported to work at about 9:00 a.m. and he proceeded to do further training concerning the work to be done. During the training she was very curious and would ask him personal questions and questions about the business and its ownership.

In responding to questions about the March 21, 1989, incident the Respondent denied that he ever approached her or put his hands on her hips or thrust himself against her. It was after this date that the Complainant did not return to work. The Respondent's evidence is that he did not call her to inquire why she did not show up for work because he had no questions to ask her. He preferred it this way. He further testified, that at no time did he sexually harass Ms. Reed, or harassed the Reeds in their apartment. In fact, it is his view that they harassed him.

The Respondent testified that in his opinion the Reeds were trouble, they did not live up to their rental agreement to act as caretakers for reduced rent. And that it was necessary for him to bring an application under the *Landlord and Tenant Act*, to have them evicted. After a full hearing in court, an order dated July 25, 1989 was made against the Reeds evicting them and ordering costs against them.

In regards to the Human Rights claim, Mr. Ragusa testified he only heard about it in July or August of 1989 and he had his then counsel reply to the Respondent's questionnaire. He concurred in that he met with Mr. Harris, the investigator and that he wanted this matter ended.

In his cross-examination, the Respondent Mr. Ragusa, was most difficult as a witness. He was not very cooperative nor responsive to questions. Numerous times this Board had to remind him he was under oath and that his refusal to answer questions or to be cooperative would lead this Board to draw adverse inferences from his behaviour.

All in all, the evidence adduced in cross-examination was helpful in helping establish that the Respondent lacked credibility. His evidence was inconsistent and the Board was left to draw an adverse inference from his lack of forthrightness as a witness.

ANALYSIS

Discrimination has been defined by the Supreme Court of Canada in *Andrews v. Law Society of British Columbia* (1989), 10 C.H.R.R. D/5719 (S.C.C.) as follows:

> Discrimination may be described as a distinction, whether intentional or not based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits and advantages available to other members of society.

The Supreme Court of Canada, in the *O'Malley v. Simpson-Sears Limited* (1985), 7 C.H.R.R. D/3102 (S.C.C.) decision, said in regards to the Human Rights decision, Boards of Inquiry are to interpret liberally and purposively the provision of such legislation. At paragraph 24766, the Court said:

> It is not in my view, a sound approach to say that according to established rules of construction no broader meaning can be given to the *Code* than the narrowest interpretation of the words employed. The accepted rules of construction are flexible enough to enable the Court to recognize in the construction of a *Human Right Code* the special nature and purpose of the enactment ... and to give to it an interpretation which will advance its broad purposes. Legislation of this type is of a special nature; not quite constitutional but certainly more than ordinary - and it is for the courts to seek out its purpose and give it effect. [emphasis mine]

This Board intends to apply the *Human Rights Code* in a purposeful liberal manner to the facts of this case.

The sections allegedly in breach:

Firstly, sub-section 2(1) of the *Human Rights Code*, R.S.O. 1990, c.H.19 as amended (the *Code*), provides to every person a right to equal treatment with respect to occupancy of accommodation without discrimination because of sex, it states:

> 2(1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap, or the receipt of public assistance.

Secondly, sub-section 5(1) of the *Code*, provides to persons a right to equal treatment with respect to employment without discrimination on the basis of sex:

> 5(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap.

Thirdly, sub-section 7(1) of the *Code* provides to persons occupying accommodation a right to freedom from harassment because of sex by their landlord:

> 7(1) Every person who occupies accommodations has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.

Sub-section 7(2) of the *Code* provides to a person a right to freedom from harassment in the workplace because of sex by their employers:

> 7(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of he the employer or by another employee.

Paragraph 7(3)(a) of the *Code* provides to person a right to freedom from unwanted sexual solicitations by their employers:

> 7(3) Every person has a right to be free from,
>
> > (a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to a person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

Paragraph 7(3)(b) of the *Code* provides to persons a right to freedom from reprisal for the rejection of a sexual solicitation by their employers:

> 7(3) Every person has a right to be free from,
>
> > (b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant, or deny a benefit or advancement to the person.

Freedom from reprisals extend to each individual who believes that he or she has been subjected to discrimination or have rejected sexual solicitation. These individuals are entitled to file or make complaints about their treatment and to have those complaints reviewed and assessed by an independent neutral body and institution, that possesses the power to rectify such situations. But, in order to preserve the right of every person equally, any such allegations of reprisal must receive careful scrupulous scrutiny. Reprisal is defined as including any acts of retaliation by someone in a

position to confer, grant or deny a benefit or advancement to the other person. This definition embraces a wide range of people with some authority, including employers and landlords.

Harassment is defined in sub-section 10(1) of the *Code* as:

> 10(1) In Part I and in this Part,
> "harassment" means engaging in a course of vexatious comment or conduct that is known or ought to be known to be unwelcome.

Therefore, to find if harassment occurred there must be certain elements present. They are:

(a) *a course of*
(b) *vexatious*
(c) *comment or conduct*
(d) *that is known or ought reasonably to be known to be unwelcome*

These elements were elaborated on by A.F. Bayefsky in the *Cuff v. Gypsy Restaurant* (1987), 8 C.H.R.R. D/3972 (Ontario Board of Inquiry) decision. In this decision Ms. Bayefsky says that:

> "The element that comment or conduct that is known or ought reasonably to be known to be unwelcome imports an objective element into the definition of harassment."

Therefore, the Board can either conclude that a Respondent know his actions were unwelcomed or the Board can import an objective standard that the Respondent should have known that his conduct was unwelcomed.

In giving her interpretation of sexual solicitation and advance, Judith Keene, in *Human Rights in Ontario*, (2 ed.)(Scarborough: Carswell, 1992) at 234-235, points out that "Thus it would seem reasonable to assume that the Legislature intended solicitation and advance to be read disjunctively." Meaning that, one only need prove that there was sexual solicitation or advance, not both, to satisfy a breach of the *Code* in this regard.

I accept that it is difficult sometimes to make a finding based on credibility only. Discrimination can be and often is a subtle occurrence and Boards' often have to rely on subjective evidence presented. The Complainant and the Respondent were the only persons who provided evidence on the Complainant and gave dramatically opposite evidence. Professor Backhouse points this out in her 1982 article on Canada's first sexual harassment decision, the *Bell v. The Flaming Steer Steak House Tavern,* she said:

> Resolution of evidentiary matters will always be critical in sexual harassment cases, since corroborative witnesses are rarely available. Furthermore, our legal system is imbued with deep-routed fears about unfounded claims of sexual abuse. In most cases of sexual harassment it is to be expected that the Complainant will be the sole witness for her side, and the alleged sexual harasser will deny all of the allegations. As a result, the trier of fact will be hard-pressed to determine which side to believe. (Emphasis added)

In complaints of discrimination, the onus is on the Complainant to prove, on a balance of probabilities, that there was a contravention of the *Code*. Since it is the Commission and the Complainant who are alleging that the Respondent violated the *Code*, they have the onus or legal burden of proving a violation of the *Code*. The Supreme Court of Canada states that:

> The complainant in proceedings before human rights tribunals must show a prima facie case of discrimination. A prima facie case in this context is one which covers the allegations made and which if they are believed, is complete and sufficient to justify a verdict in the Complainant's favour in the absence of an answer from the Respondent-employer. (See *O'Malley*, supra at D/3108, paragraph 24782).

I see no reason why this onus would not extend to complaints related to landlord and tenant matters.

Once the Commission and the Complainant have presented a prima facie case, the evidentiary burden then shifts to the Respondent to rebut the prima facie case by providing a rational alternative explanation for his behaviour. (See *Mitchell v. Nobilium Products Limited* (1981), 3 C.H.R.R. D/641 (Ont. Bd. Inq.) at D/642 - D/643, paragraphs 5764 and 5772 (Kerr).

There is one other issue that needs to be addressed before I deal with the decision in this matter. That is, the issue of the landlord and tenant action taken against the Reeds by Mr. Ragusa. The landlord and tenant matter was decided by the courts, it is not the role of this Board to revisit that proceeding or to comment on what went on before that court. The request for this Board to compensate the Reeds for money expended pursuing the eviction action is outside the jurisdiction of the Board. [See *A.B. v. Colloredo-Mansfeld* (No.3) 23 C.H.R.R. D/328 (Ont. Board of Inquiry)]. This Board though, is prepared to consider whether the threats to evict constituted reprisal.

DECISION

I find the evidence of the Complainant credible and corroborated in part by her husband, Mr. Reed, and her mother, Mrs. Kelly. On the other hand, I find the Respondent's evidence not credible, nor

corroborated by any witness. In fact, I find that his evidence to be inconsistent and to be concocted after the fact. The Respondent painted for the Board a number of characterized theories as put by Commission Counsel as follows:

1. I don't need a woman and she is way unattractive,
2. It is the other way around, she attacked me,
3. Bad tenants, and
4. Conspiracy.

All these theories are unbelievable and unsubstantiated. The Respondent's evidence regarding the Complainant being the person who made the sexual advances, is clearly a story concocted after the fact. They are therefore not accepted.

In order to simplify and, in a chronological manner, deal with each violation of the *Code*, I intend to deal with each section which has been alleged as violated.

Did the Respondent violate sub-section 2(1) of the *Code*?

The Complainant is entitled to equal treatment with respect to occupancy of accommodation without discrimination because of sex.

The evidence presented on behalf of the Complainant clearly supports a finding that the Respondent is liable for the violation of the rights of the Complainant. The Respondent violated her right to equal treatment to peaceable occupancy of accommodations by yelling sexually charged and demeaning gender specific obscenities through the apartment door. His threats to evict her and terminate her occupancy of the apartment were directed at her because of her gender, as were his sexual solicitations.

Did the Respondent violate sub-section 7(1) of the *Code*?

Sub-section 7(1) protects against harassment because of sex in accommodation. There is no case law in this area and few Boards have had the opportunity to consider this issue of sexual harassment in accommodation.

In an article by Sylvia Novac, in Canadian Women Studies / Les Cahiers De La Femme, Vol. II, No. 2, entitled *Sexual Harassment of Women Tenants*, Ms. Novac states:

> The interaction of private property relations and gender relations take on new meanings when coercive sexuality invades the privacy of women's homes, homes that frequently are the private property of men.

There is a connection between the Complainant's workplace and her home. The Respondent was, in addition to being the employer of the Complainant, also her landlord and as such possessed keys to her apartment and according to the Respondent, Mr. Ragusa, the apartment was his private property. This intensified the Complainant's fears. The Respondent's actions concerning the apartment clearly established that he gave no attention to her right as tenant.

The Respondent's comments and overtures, such as banging on the apartment door, leaving numerous notes on the apartment door and shouting obscenities through the door, amounted to a violation of the Complainant's right to freedom from sexual harassment in accommodation. This Board is satisfied that the Respondent made overtures, comments and actions towards the Complainant, which he knew or should reasonably have known, were unwelcomed. The Board concludes therefore, that the Complainant was correct in asserting that the Respondent harassed the Complainant in her apartment by his actions and persistent behaviour contrary to the *Code*.

Was sub-section 7(2) violated by the Respondent?

This sub-section states that every person who is an employee has a right to freedom from harassment in the workplace because of sex by her employer or agent.

The definition of "harassment" in section 10 of the *Code* states: "harassment" means engaging in a course of vexatious, comment, or conduct that is known or ought reasonably to be known to be unwelcome. I conclude from the analysis of Bayefsky and Keene that sexual harassment need not be only demands made for sexual favours, it can be any type or a single act of overtures, requests, invitations or comments made of a sexual nature, especially when these overtures, requests, invitations or comments are made upon unwilling, vulnerable, scared, and job dependent employees by employers, their agents or co-workers. Sexual harassment is a form of sex discrimination, which is clearly prohibited by law. Sexual harassment takes different forms and can occur in different places. Sexual harassment can be any sustained sexual behaviour that a person finds personally offensive. It may be subtle, obvious, verbal or non-verbal. It may be physical or psychological.

Sexual harassment can also be effected through the use of profane and abusive language that denigrates a person's gender.

There is evidence of two physical incidents: the Respondent's attempt to hug and kiss the Complainant on her second day of work and later on March 21, 1989, when he came up behind her and rubbed his genitals against her. Additionally, the Respondent repeatedly made comments to her, asking her if she knew where he could meet women. The actions of the Complainant, her pushing him away, telling him she is married should have been more than enough indication for him to know or to have reasonably known that his actions were unwelcomed. He ignored all her protestations. Based upon these facts, this Board finds that the Respondent is liable for harassing the Complainant in her workplace.

Did the Respondent violate sub-section 5(1)?

As to the sub-section 5(1) violation, a right to equal treatment with respect to employment without discrimination on the basis of sex, the evidence of the Complainant reviewed above is sufficient to conclude that the Respondent was in breach of the *Code*.

The Respondent in his rebuttal to these allegations, did not satisfy this Board that the physical incidents and comments would have taken place with the Complainant had she not been a woman. It is fair to conclude that had the Complainant been a man, the physical incidents are unlikely to have taken place. In fact, his testimony that it was the Complainant who initiated conversations of a sexual nature and eventually made a pass at him, went to solidify the Board's view of the Respondent's liability for violation of this section of the *Code*.

The physical incidents coupled with the comments by the Respondent establishes on a balance of probabilities, that the Respondent violated the Complainant's right to equal treatment with respect to employment without discrimination on the basis of sex. The fact that the Complainant was forced to abandon her employment is a violation of her right to equal treatment with respect to employment.

Did the Respondent as an employer and landlord sexually solicit the Complainant in violation of paragraph 7(3)(a) of the *Code*?

The actions of the Respondent discussed above already caused the Board to conclude that the Respondent knew or ought reasonably to know that it was unwelcome. Also by way of the aforementioned discussion on sexual harassment, the Board concluded that the Respondent's actions and behaviour amounted to sexual solicitation or advance made by a person in a position to confer,

grant or deny a benefit. After all, he knew he was her employer and her landlord and therefore possessed not only one capacity to exert control over the Complainant, but two. He possessed the ability to fire her and evict her. There is enough evidence presented to satisfy this Board that he was in a position to grant or deny the Complainant a benefit.

Were there reprisals taken against the Complainant by the Respondent in violation of paragraph 7(3)(b) of the *Code*?

The Respondent, in my view, took actions of reprisal against the Complainant in various ways. His reduction of her final pay cheque; notes affixed to the apartment door to her after she filed her complaint; increasing the rent for the apartment without notice and his conduct that led to her constructive dismissal when she abandoned her job.

In summary, this Board finds that the Personal Respondent violated the rights of the Complainant contrary to sub-sections 2(1), 5(1), 7(1), 7(2) and 7(3)(a) and (b) of the *Code*.

CORPORATE LIABILITY

The next question, having found against the Respondent Mr. Ragusa personally liable, is whether the Corporate Respondent Cattolica Investments Ltd., is jointly and severally liable with the Respondent Ragusa? Sub-section 45(1) of the *Code* states:

> For the purposes of this *Act*, except subsection 2(2), subsection 5(2), section 7, and subsection 44(1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee, or agent of a corporation, trade union, trade or occupational association, organization shall be deemed to be an act or thing or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization.

Section 45 exists for the purpose of protecting corporations that neither have control nor can reasonably be expected to have control over an employee whose actions may violate the *Human Rights Code*.

This means that although the offending employee may be found in contravention of the *Code*, there may be instances in which the size or nature of the corporation, in this case, a sole proprietorship, may create such a "distance" between the offending employee and the person or persons responsible for the direction of that corporation as to permit that corporation to avoid liability. However, section

45 cannot be used as a shield by a corporation where the offending employee is also part of or is the actual directing mind of the corporation (see *Wei Foo v. Ontario Government Protection Service* (1985), 6 C.H.R.R. D/36 (Ont. Board of Inq.), *Janzen et al., supra, Robichaud v. The Queen* (1987) 40 D.L.R. (4th) 577 (S.C.R.).)

In this case, the evidence which is corroborated by the Respondent himself shows that the individual Respondent, Mr. Ragusa, and the Corporate Respondent are one and the same. He, without a doubt, is the sole and only directing mind of the corporation. The business is his. He sets its goals and tasks and he established the day to day functioning of the operation. He is the only listed director. He is responsible for the hiring, firing, and the establishment of work related procedures. He also exerts control over the business and its finances. He alone exercises all management functions. In the course of conducting business and making decisions on behalf of the corporation, he had the opportunity to harass sexually and discriminate against the Complainant, and did so. His actions are directly related to his role as the 'sole directing mind' of the corporation and as the person who made all the management decisions of the corporation. As the sole directing mind of the Corporate Respondent, it is his responsibility to ensure that all employees are treated in compliance within the *Code*. Accordingly, his actions are the actions of the Corporate Respondent and in the result, I find the Corporate Respondent Cattolica Investments Ltd., in breach of sub-sections 2(1) and 5(1) of the *Human Rights Code* and find it jointly and severally liable with the Personal Respondent Mr. Ragusa.

REMEDY

The Complainant Ms. Reed claims an award under s.41(1)(b) of the *Code* and claims damages for the following:

1. the sum of $900.00 which represents rent increase of $75.00 for 12 months;

2. the sum of $275.00 incurred as a result of moving to the new residence;

3. the sum of $100.00 which represents the balance owed the Complainant from the $240.00 for wages less deductions for (a) $80.00 for the purchase of a bamboo cabinet and (b) a $40.00 cash advance given to the Complainant by the Respondent and (c) $20.00 paid to the Complainant by the Respondent;

4. the sum of $900.00 which represents lost wages as a result of her being unemployed for eighteen days. This calculation is based upon her weekly earnings of $250.00;

5. the sum of $2,940.90, which represents her losses incurred for legal fees in the landlord and tenant eviction action.

6. General damages if $5,000.00, for her loss of dignity and self-respect and for the loss of the human right of equality of opportunity in employment.

7. General damages of $5,000.00, for loss of dignity and self-respect and for the loss of human right of equality in occupancy of accommodation.

8. Interest for pre-judgment and post-judgment pursuant to s.127 of the *Courts of Justice Act.*

Pursuant to paragraph 41(1)(a) of the *Code*, the Commission and the Complainant are requesting the following:

1. The Respondent keep a record of his employees and his tenants for the purposes of making them available to the Commission in the event of any future complaints;

2. That the Respondent, Mr. Ragusa, post a copy of the decision of this Board in a prominent place at his business "York Mini Storage".

1. The sum of $900.00 representing rental increase, and
2. the sum of $275.00 representing moving costs.

As a direct result of the actions of the Respondent by his violation of s.7 of the *Code*, it was necessary for the Complainant and her husband to find other accommodations. This new accommodation resulted in an increased monthly rent of $75.00 and moving expenses of $275.00.

Previous Boards have granted special damage awards in loss of accommodation cases which includes monetary compensation for complainants having to live elsewhere and pay increase rent, see *Richards v. Waisglass* (29 July 1994), No.635 (Ont. Bd. Inq.) At 17 (J. House), *Aquilina v. Pokoj* (1991), 14 C.H.R.R. D/230 (Ont. Bd. Inq.) At D/234 (B. Hovius), and *Blake v. Loconte* (1980), 1 C.H.R.R. D/74 (Ont. Bd. Inq.) at D/83 (P.A. Cumming).

Although the above cases deal specifically with discrimination in accommodation and not directly with the issue involving sexual harassment in accommodation as in this case, they lend some guidance as to the assessing of remedy where there is violation of the *Code* in accommodation type matters.

I am of the view that the actions of the Respondent in this matter cry out for a remedy, but not for the sum requested.

There was no evidence led as to attempts by the Complainant to find an apartment similar in size or amount of rent. There was no immediate vacating of the apartment by the Complainant and her husband. The evidence clearly establishes that the Respondent had to bring an action under the *Landlord and Tenant Act* to evict the Complainant. It was only then that they obtained new rental accommodation and moved.

It is my view that the Complainant would not have moved from this accommodation, given her satisfaction with its location, reasonable rent and acceptance of cats, if it were not for the actions of the Respondent which violated her rights. An appropriate award as a remedy for these two stated expenses, is a total of $500.00. The amount thus awarded reflects that under normal circumstances it takes some time to find suitable new accommodation and the proper giving of notice, as well as some costs incurred for the actual moving. The $500.00 represents damages over 4 months increased rent at $75.00 per month for a total of $300.00 and moving costs of $200.00.

3. The sum of $100.00 representing Balance of Wages:

From the evidence led, the Respondent's calculation of the number of hours worked by the Complainant during the last few days of her employment does not conform to the actual hours she worked. It is my view that the hours worked and owed to the Complainant is as is stated in her evidence totalling to $240.00 [Exhibit 10]. Applying credits to the Respondent for $80.00, $40.00 and $20.00, which were cash advances given to the Complainant by the Respondent there is a balance owing to the Complainant by the Respondent of $100.00.

4. Lost Wages:

The Board is satisfied that the loss of income arose directly out of the infringement in this case. Had it not been for the infringement, the Complainant expected to stay in the employ of the Respondent, given the situation of working and living in the same location, where the rent and accommodations were satisfactory for reasons already stated.

The purpose of compensation for loss of income is to restore the Complainant to where she would have been if the discrimination had not occurred: see *(Airport Taxicab (Malton) Association v. Piazza)* (1989), 10 C.H.R.R. D/6347 (Ont. C.A.) At D/6348, paragraph 45017 (per Zuber J.A.).

A complainant in human rights cases as in wrongful dismissal case, has a duty to mitigate her damages. This is so, even in cases where complainants quit employment instead of being fired, because of their experience of discrimination. But the fact that a complainant quits employment should not foreclose her from receiving compensation for her lost wages: see *(Parks v. Christian Horizons)* (1992), 16 C.H.R.R. D/40 (Ont. Bd. Inq.) at D/45 - 46 (E.P. Mendes).

Complainants who are forced to quit employment because of discrimination, must not be further discriminated against by imposing strict rules or duties upon them to prove their mitigation of damages. The standard applied should be no greater or lesser than that of a complainant who was terminated from employment. Persons experiencing discrimination in employment are not obligated to stay and suffer distress and await eventual termination. They should be free to decide to quit, if that for them is the most reasonable action to take.

This Board is satisfied that the Complainant Ms. Reed made serious and reasonable efforts to mitigate her loss by seeking other employment. She was not searching for a special job, instead she took the first job she was offered and as a result was only unemployed for a period of 18 days.

Accordingly, in the Board's view, she is entitled to compensation for the 18 days she was unemployed based on the rate of pay when she was in the employ of the Respondent. Calculating the 18 days on her weekly salary of $250.00, the compensation equals to $900.00.

5. The sum of $2,940.90 for legal fees incurred in the Landlord and Tenant matter:

Having earlier concluded that this matter is beyond the jurisdiction of this Board and is res judicata, this request is denied.

6. and 7. General Damages:

Under this head of general damages counsel argued for damages in two specific areas:

(1) for the loss of dignity and self-respect and for the loss of the human right of equality of opportunity in employment and asked for the monetary sum of $5,000.00;

(2) for the loss of dignity and self-respect and for the loss of human right of equality in occupancy of accommodation and asked for the monetary sum of $5,000.00.

In *(Ghosh v. Douglas Inc.)* (1992), 17 C.H.R.R. D/216 (Ont. Bd. Inq.) At D/234 para 117 (H.A. Hubbard), it is stated:

> "...However, I understand my obligation under s.40(1)(b) [now s.41(1)(b)] to be to assess damages, not globally, but in relation to each right infringed and each party who infringed it."

The reference in *Ghosh* supra, stands for the proposition that damages under s.41(1)(b) can and should be awarded with respect to each right infringed, where requested. In this matter the request is for two specific infringements, as stated above.

The availability of damages for "intrinsic loss" of human rights have been confirmed on a number of occasions by Boards of Inquiry: see *Lampman v. Photoflair* (1992) 18 C.H.R.R. D/196 (Ont. Bd. Inq.) *Leshner v. Ontario* (No.2) (1992), 16 C.H.R.R. D/184 (Ont. Bd. Inq. (1992), 18 C.H.R.R. D/196 and Inq.). In addition, other human right cases have established several grounds for making an award of general damages for loss arising out of an infringement. These grounds include:

(i) loss of dignity and self-respect

(ii) loss of human right of equality of opportunity of employment

(See *Henwood v. Gerry Van Wart Sales Inc.* unreported decision Feb. 19, 1995 by Anand (Ont. Bd. Inq.) at 14.

It is also accepted fact that any award, must be commensurate with the injury. The awards requested under this section, in my view are distinct from a claim for "mental anguish". No claim was made for mental anguish in this matter and no evidence led in this regard. Therefore, no award will be made under the heading "mental anguish."

Ms. Reed testified that as a result of the treatment by the Respondent, she felt that she could not trust people anymore, she was on guard all the time, she was paranoid, looking over her shoulder all the time, she could not be alone in an elevator with any men. She was a basket case. Her sex life took a dive and that she could not touch her husband or he her for a long time. She said she felt vulnerable and violated and she felt as if she had no home any more. As stated by her mother in evidence, she felt like a prisoner and had to barricade herself in the apartment and that the experiences left her a nervous wreck.

In *Henwood*, Supra, *Strauss v. Canadian Property Investment Corporation* (unreported decision of Bassford)(23 June, 1995), (Ont. Bd. Inq.) , *Donaldson v. Rainbow Inc.* (14 January 1994), No.583 (Ont. Bd. Inq.) and the *Lord v. Haldimand-Norfolk Police Services Board* (14 June 1995) No.95-024, there are discussions as to appropriate amounts of award in these types of cases. In cases of this nature, where there is a finding of sexual harassment, the damage for the loss should reflect the nature of the seriousness of the injury caused. The loss arising out of the infringement reflects the loss of the human right of equality of opportunity in employment and in addition, in this case, the loss of the human right of equality in occupancy of accommodation.

In this case, the harassment was both verbal and physical. There was aggressiveness and physical contact in the harassment. The harassment was also ongoing and frequent and was transferred to the Complainant's accommodations. The Complainant said she felt vulnerable, more so because the Respondent was both her employer and her landlord. The conduct had a psychological effect on the Complainant. This Board concludes that the Complainant Ms. Reed is entitled to general damages in the total amount of $7,000.00 being $5,000.00 for her loss of dignity and self-respect in employment and $2,000.00 for her loss of dignity and self-respect in occupancy of accommodation.

8. Interest:

The Complainant is requesting both pre-judgment and post judgement interest on all awards. Interest is payable on both special and general damage awarded from July 12, 1989 see *Cameron v. Nel-Gor Castle Nursing Home* (1984), 5 C.H.R.R. D/2170 (Ont. Bd. Inq.) at D/2201 paragraph 18564. The Complainant is entitled to interest on the awards made: see *Lampman v. Photoflair Ltd.* (1992), 18 C.H.R.R. D/196 (Ont. Bd. Inq.). Section 17(2) of the *Statutory Powers Procedure Act* (S.P.P.A.) dictates that where an order for the payment is made, the Board is required to set out the rate of interest applicable. Interest therefore is to be calculated by applying the appropriate rate as provided by s.128 and s.129 of the *Courts of Justice Act.*

Pre-judgment interest is to be calculated from the date of receipt of the complaint by the Respondent: see *Cameron, supra*, at paragraph 18565. The receipt date by the Respondent in this matter is July 12, 1989. The applicable rate is 8 % per annum being the rate designated for the last quarter before the date of this order. The calculation is as follows:

Special damages of (500.00 + 100.00 + 900.00)	1,500.00
General damages	7,000.00
Total	$8,500.00

Interest at 8% for 72 months (July 12, 1989 - July, 1995)

$$\$8,500.00 \times \frac{72 \text{ months}}{12} \times 8\% = \$4,080.00$$

The total pre-judgment interest amount payable is $4,080.00.

Post-judgment interest on both the special damages and the general damages awards will be in accordance with s.129 of the *Courts of Justice Act*, R.S.O. 1990, as amended, and will be payable from the date of this decision.

In keeping with its public interest role, the Commission and the Complainant request to have the Respondent Mr. Ragusa:

(1) Keep a record of his employees and his tenants;

(2) post a copy of this decision in a prominent place at his business "York Mini Storage".

Given the Board's authority under paragraph 41(1)(a) to make orders such as the ones requested, I so order.

ORDER

This Board, having found that the Respondent, Mr. Ragusa and the Corporate Respondent Cattolica Investments Ltd. to have committed breaches of sub-sections 2(1), 5(1), 7(1), 7(2), 7(3)(a), 7(3)(b) and section 9 of the *Human Rights Code*, hereby orders the following:

The Respondents are jointly and severally liable to pay forthwith to the Complainant as follows:

(a) as special damages, for lost wages and expenses, the sum of $1,500.00,

(b) as general damages, for her loss of dignity and self-respect in both opportunity of employment and occupancy of accommodation, the sum of $7,000.00,

(c) pre-judgment interest on the said sums, in the amount of $4,080.00,

(d) post-judgment interest in accordance with the *Courts of Justice Act*, from the date of this decision and

(e) as against the Personal Respondent Mr. Ragusa:

(i) that the Respondent Mr. Ragusa, keep a record of his employees and tenants for the purposes of making them available to the Commission in the event of any future complaints;

(ii) that the Respondent Mr. Ragusa, post a copy of this decision in a prominent place at his business "York Mini Storage", at 91 Maplecrete Road, Concord, Ontario L4K 1A5.

Dated at Toronto this 26th day of March, 1996.

G. K. McNeilly
Chair